

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
DANVILLE DIVISION

MAR 11 2013

JULIA C. DUDLEY, CLERK
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UNITED STATES OF AMERICA

Case No. 4:08-cr-00029-1

v.

§ 2255 MEMORANDUM OPINION

JAMIE DANTONI DILLARD,
Petitioner.

By: Hon. Jackson L. Kiser
Senior United States District Judge

This matter is before me upon petitioner's "motion to re-evaluate sentencing calculations and presentence investigation report data to reduce or vacate sentence, pursuant to Rules 59(e) and 60(b), Fed. R. Civ. P.," to be relieved from the criminal judgment entered on June 16, 2009. After reviewing the instant motion, I conclude that it is appropriately filed and dismissed as a successive 28 U.S.C. § 2255 motion.

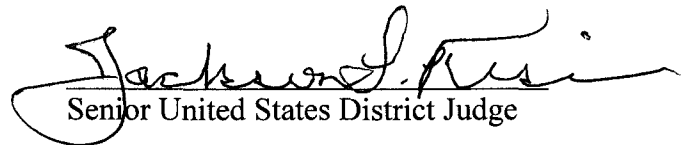
When a convict files a motion in a closed criminal case challenging a criminal judgment, the motion is often considered a successive § 2255 motion if the motion raises claims allegedly omitted from the initial § 2255 motion or presents new evidence in support of a claim already denied. Gonzales v. Crosby, 545 U.S. 524, 531 (2005) (citing Calderon v. Thompson, 523 U.S. 538, 553 (1998)). To allow a convict to bring these claims in a subsequent § 2255 motion would circumvent the requirement under § 2255(h) that a court of appeals certify any subsequent § 2255 claim. Id. at 531-32.

I dismissed petitioner's first § 2255 motion with prejudice on January 24, 2011. Petitioner presently argues that he should be resentenced because the probation officer erred in drafting the presentence investigation report. I find that the instant motion again challenges the criminal judgment, and I construe the instant motion as a 28 U.S.C. § 2255 motion to vacate, set aside, or correct sentence. A district court may consider a second or successive § 2255 motion

only upon specific certification from the Fourth Circuit Court of Appeals that the claims in the motion meet certain criteria. See 28 U.S.C. § 2255(h). As petitioner has not submitted any evidence of having obtained certification from the United States Court of Appeals for the Fourth Circuit to file a second or successive § 2255 motion, I dismiss petitioner's § 2255 motion without prejudice as successive. Based upon my finding that petitioner has not made the requisite substantial showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c), a certificate of appealability is denied.

The Clerk is directed to send copies of this Memorandum Opinion and the accompanying Order to petitioner and to counsel of record for the United States.

ENTER: This 1st day of March, 2013.


Senior United States District Judge